



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED

NOV 21 2011

OFFICE OF PETITIONS

Richard D. Pollak
3133 Via de Caballo
Encinitas CA 92024

In re Patent No. 6,635,309
Issued: October 21, 2003
Application No.: 09/803,218
Filing Date: March 12, 2001
Attorney Docket No. **RDP001U**

:
: **REQUEST FOR INFORMATION**
:
:

This is a request for information in response to the petition under 37 CFR 1.378(b), filed October 3, 2011, to reinstate the above-cited patent.

Petitioner is allowed a non-extendable period for reply of **TWO (2) MONTHS** from the mailing date of this communication to provide a response. The response should be titled, "Response to Request for Information." If no response is provided within the period set forth, a decision will be made solely on the merits as set forth in the petitions under 37 CFR 1.378(b) filed February 1, 2011, June 23, 2011, and October 3, 2011. No additional fees are due.

The above-identified patent issued on October 21, 2003. Therefore, the grace period in 35 U.S.C. § 41(b) for paying the 3.5-year maintenance fee expired at midnight on October 21, 2007.

Petitioner is required to address the following points:

- Petitioner states that, prior to September 19, 2009, petitioner intended to file a petition under 37 CFR 1.378(c) to reinstate that above-cited patent. However, because of a series of misfortunes that befell petitioner (include memory loss), petitioner was not able to timely file the petition. Implicit in this assertion is that petitioner realized prior to September 2009, that the patent was expired. A successful petition under 37 CFR 1.378(b) requires that petitioner establish that the entire delay was unavoidable—from the due date for the maintenance fee (October 21, 2007) until the filing of the grantable petition. Accordingly, petitioner is required to affirmatively state if petitioner recalls how and when petitioner discovered first discovered, i.e., pre-September 2009, that the patent was expired and the steps petitioner may have taken to reinstate the patent prior to September 19, 2009.
- The statement of Dr. George Groth regarding petitioner's memory loss is noted. It is requested that petitioner clarify the medical speciality of Dr. Groth.
- It is noted that petitioner states that petition suffered a heart attack in December 2009. Petitioner is required to establish that ill health related to the heart attack or other illness existed from December 2009 until February 2011, and that petitioners' health was so poor as to prevent petitioner from taking steps to reinstate the patent.
- The hospital invoices related to petitioner's hospitalization following the heart attach are noted. If petitioner is asserting that ensuing financial hardship played a part in preventing petitioner from trying to reinstate the patent, petitioner must establish that such financial hardship existed by providing copies of bank statements, tax returns, accountant notes, or other financial documents that demonstrate that during the relevant period petitioner did not have the means to

pay the fees to reinstate the patent. Petitioner should redact any personal identifiers from these documents as such may be viewable by the public.

- It is noted that petitioner again argues in the petition filed October 3, 2011, that petitioner's petition under 37 CFR 1.378(c) should be considered by waiver of applicable rules under 37 CFR 1.183. Petitioner is again advised that this argument is unavailing. The petition under 37 CFR 1.378(c) was not filed within two years of the date the patent expired. Further, the requirement that the petition under 37 CFR 1.378(c) be filed within two years of the expiration of the patent is a requirement of the governing statutes which the USPTO has no authority to waive. If petitioner again chooses to assert this argument, petitioner will be charged \$400.00 for the petition fee required for a petition under 37 CFR 1.183 and a denial decision, which is a final agency action, issued on the petition under 37 CFR 1.183.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patent
Mail Stop Petitions
Box 1450
Alexandria, VA 22313-1460

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petition Attorney
Office of Petitions